

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2054-01
Bill No.: HB 940
Subject: State Attorney General; Cities, Towns, and Villages; Counties; Liability; State Employees
Type: Original
Date: April 7, 2009

Bill Summary: The proposal establishes the Missouri False Claims Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Various State Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Coordinating Board for Higher Education, Office of Administration, Department of Economic Development, Department of Insurance, Financial Institutions, and Professional Registration, Department of Mental Health, Department of Natural Resources, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Revenue, Department of Public Safety – Missouri State Highway Patrol, – State Emergency Management Agency, – Missouri Gaming Commission, – Capitol Police, – Division of Alcohol and Tobacco Control, – Division of Fire Safety, Office of the Governor, Missouri Consolidated Health Care Plan, Department of Conservation, Missouri Ethics Commission, Missouri House of Representatives, Office of the State Auditor, Missouri Senate, Office of the State Public Defender, Office of the State Treasurer, City of Centralia, City of Kansas City, and the City of Raytown** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed within existing resources.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the DOR to distribute to schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Oversight assumes any increase or decrease in fine or penalty revenues generated cannot be determined. Therefore, the fiscal note does not reflect any fine or penalty revenues for the local school districts.

ASSUMPTION (continued)

Officials from the **Department of Transportation (MoDOT)** assume this bill creates the “Missouri False Claims Act.” It authorizes the Attorney General (AGO) to pursue civil penalties against persons or entities who submit false claims for payment to the state or a political subdivision of the state (including school districts). The bill authorizes the AGO to file a lawsuit on behalf of the state when a false claim has been made. This will effectively prevent Missouri Highways and Transportation Commission (MHTC) from pursuing any false claims made against MHTC on its own.

The bill does not specifically state that any penalties or damages recovered due to a false claim will be used to reimburse the damaged state agency, school district, etc., but if that is the case, this bill could have an unknown fiscal impact upon MoDOT

Officials from the **Department of Corrections (DOC)** assume in addition to establishing the Missouri False Claims Act, this bill establishes a cause of action for an employee who is discharged, demoted, suspended, threatened or harassed, “or in any other manner discriminated against in the terms and conditions of employment” by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under. The relief includes reinstatement with two times the amount of back pay, interest on back pay, special damages, including costs and attorney’s fees.

DOC also assumes the relief is greater than provided for in other similar employment discrimination/retaliation/whistle blower statutes (two times back pay/interest/attorney’s fees). The scope is broad and undefined, to include employees “in any other manner discriminated against in the terms and conditions of employment” (necessarily must be something other than discharge, demotion, suspension, threats or harassment, because those are specifically mentioned), and plaintiffs would include not only employees who assisted in an action filed pursuant to the Missouri False Claims Act, but also in an action “to be filed.” Individuals may file actions under the Missouri False Claims Act in the name of the government. Because of the relief, broad scope, and vague terms in this section, this section will likely generate a lot of litigation.

In summary, fiscal impact for the DOC is unknown.

ASSUMPTION (continued)

Officials from the **Department of Social Services – Human Resources Center (DOS)** assume this would duplicate the “Whistleblower” protections that the DOS employees already have under RSMo 105.055; however, it would increase the restitution to effected employees. Employees with regular status may appeal to the Personnel Advisory Board (PAB) whenever they allege that they have been retaliated against (disciplined) for disclosure of prohibited activities.

Under this proposed legislation, any employee who is retaliated against is entitled to all relief necessary to make the employee whole including: reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys’ fees, and the employee may bring action in the appropriate circuit court for relief.

This increases the liability to the agency because of the additional restitution to the effected party (for example, currently employees receive back pay not two times the amount of back pay; do not receive interest on the back pay; and they are not entitled to special damages). Additionally, it is noted that no limit is established on the special damages that can be awarded. DOS assumes the cost would be (Unknown).

Officials from the **Department of Public Safety – Missouri Veterans Commission** assume the fiscal impact to be unknown. The fiscal impact, if any, may be positive, although it is not clear that the funds would be returned to their agency or whether they would go to General Revenue.

Officials from the **Office of Prosecution Services (OPS)** assume the potential fiscal impact on county prosecuting attorneys will depend on the extent to which law enforcement agencies choose to enforce this provision and/or are able to enforce this provision. If law enforcement agencies make arrests under this provision, there may be an impact based on the additional cases that may be filed. OPS assumes this legislation would not have any significant fiscal impact on the OPS.

Oversight assumes county prosecutors could absorb any increase in cases referred to prosecutors within existing resources.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from **Clinton County** assume they may incur some financial losses as well as legal costs as a result of the proposal.

Oversight assumes the various state agencies and local governmental entities could incur increased liability costs as a result of the proposal. Oversight has reflected the costs to the general revenue fund, various state funds, and local government as (Unknown).

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs – Various State Agencies</u>			
Increased liability payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
VARIOUS STATE FUNDS			
<u>Costs – Various State Agencies</u>			
Increased liability payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
LOCAL GOVERNMENT			
<u>Costs – Local Government</u>			
Increased liability payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation establishes the Missouri False Claims Act. In its main provision, the bill specifies that a person will be liable to the state or relevant political subdivision for a civil penalty if he or she:

1. Knowingly presents, or causes to be presented, false or fraudulent claims for payment or approval to any officer or employee of the state, any political subdivision, public school district, or public charter school;
2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved or to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government;
3. Conspires to defraud the government by getting a false or fraudulent claim allowed or paid;
4. Has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government or willfully to conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

FISCAL DESCRIPTION (continued)

5. Makes or delivers a certified receipt of property used without completely knowing that the information on the receipt is true if authorized to make or deliver the document and with the intent to defraud the government;
6. Knowingly buys or receives as a pledge of an obligation or debt public property from an officer, agent, or employee of the government who may not sell or pledge the property; or
7. Violates Section 105.452, 105.454, 576.010, 576.020, 576.030, 576.040, 576.050, or 576.080, RSMo.

The penalty for anyone committing any of these acts must be at least \$10,000 and less than \$100,000, plus three times the amount of damages sustained by the government or political subdivision unless the court finds that the person furnished the relevant entity charged with investigating the claim with all relevant information; fully cooperated with the investigation; and at the time of production of information and cooperation, had no knowledge of an investigation and no criminal prosecution, civil action, or administrative action had commenced.

The bill also requires the Attorney General to diligently investigate any violation of these provisions and allows any person to bring a civil action for himself or herself and for the government.

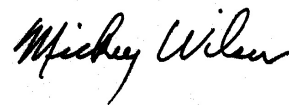
This legislation is not federally mandated and would not require additional capital improvements or rental space. The proposal may duplicate “whistleblower” provisions in Section 105.055, RSMo.

SOURCES OF INFORMATION

Office of the Attorney General
Department of Agriculture
Coordinating Board for Higher Education
Office of Administration
Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Natural Resources

SOURCES OF INFORMATION (continued)

Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
 – State Emergency Management Agency
 – Missouri Gaming Commission
 – Capitol Police
 – Missouri Veterans Commission
 – Division of Alcohol and Tobacco Control
 – Division of Fire Safety
Office of the Governor
Missouri Consolidated Health Care Plan
Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Office of Prosecution Services
Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
City of Centralia
City of Kansas City
City of Raytown
Clinton County



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